IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Smt. Kosar Bano & ors. Versus Mohammed Abbas Khan.

S.B. Criminal Misc. Petition No. 585/2005
against the order dated 24-1-2005 passed
by the Judge, Family Court, Jodhpur, in
Criminal Case No. 99/2002.

...

Date of Order: September 15, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. G.M. Khan, for the petitioners.
Mr. Nagraj Goswami, for the non-petitioner.

BY THE COURT:

By this criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioners have challenged the order dated 24-1-2005 passed by the Judge, Family Court, Jodhpur (for short, "the trial Court" hereinafter) in Criminal Case No. 99/2002, whereby on an application under Section 125 of the Code, the trial Court granted monthly allowance of interim maintenance in favour of petitioner No.2 Kumari Tabbasum and petitioner No.3 Jubaid; however, declined to grant maintenance in favour of petitioner No.1 Smt. Kosar Bano. Aggrieved by the order denying maintenance to petitioner No.1 Smt. Kosar Bano,

the petitioners have filed the instant criminal miscellaneous petition.

I have heard learned counsel for the parties. Carefully gone through the order impungned.

It appears that non-petitioner Mohammed Abbas Khan filed an application for restitution of conjugal rights. A decree of restitution of conjugal right, though ex parte, was passed. On the basis of that decree of restitution of conjugal rights, the non-petitioner submits that it is petitioner No.1 Smt. Kosar Bano who, without reasonable cause, has deserted the non-petitioner and, therefore, she is snot entitled for any maintenance. The parties are yet to lead evidence and this question cannot be decided conclusively at the stage of considering an application for maintenance.

So far as grant of maintenance to petitioners No.2 and 3 is concerned, the non-petitioner came with the plea that one of them was not born from his loin. It cannot be said at this stage that one of the petitioners is not the child born from the loin of the non-petitioner. Therefore, the trial Court was justified in granting maintenance in favour of the non-petitioner No.2 and 3. However, keeping in view the decree of restitution of conjugal rights in favour of the petitioners, the trial Court declined to grant maintenance in favour of petitioner No.1 Smt. Kosar Bano. Therefore, the impugned order, in my view, to this

extent, cannot be said to be suffering from any error. No case for interference in the order impugned awarding maintenance in favour of the petitioners No.2 and 3 and declining to award maintenance in favour of petitioner No.1, is made out.

The criminal miscellaneous petition is, therefore, dismissed. However, the trial Court is directed to decide the main application expeditiously and preferably within six months from the date of receipt of this order.

(H.R.PANWAR), J.

mcs